

Disinheritance and Forced Heir Protection - abstract

Disinheritance is a significant instrument in inheritance law, protecting the testator's autonomy to dispose of their own property. It allows the testator to deprive their descendants of the right to a forced share in the estate, breaking the centuries-old tradition of intergenerational solidarity. The antithesis to disinheritance is the protection of a testator's descendant, i.e. the forced heir, who, under common circumstances, has the right to be provided for by the testator in their *mortis causa* actions. However, the legislation concerning these matters is often unclear, inconsistent, and imprecise. The aim of this thesis is to point out these problems and explain them to the reader, offer a comprehensive view on the historical development of both disinheritance and forced heir protection, and describe the current substantive and procedural provisions.

The first chapter which defines the basic terminology is followed by a chapter on the historical development of disinheritance and forced heir protection in ancient Rome, the Middle Ages but especially in the Austrian Civil Code (ABGB) and the Czechoslovak Civil Codes of 1950 and 1964.

The succeeding chapters are focused on the general rules of disinheritance and forced heir protection, primarily the testator's right to freely dispose of their property but also their obligation to provide for the future generations. The next section of this thesis focuses on forced heir protection on the constitutional and legislative levels, as well as on certain aspects of the forced share, e.g. the prohibition of encumbrance or the calculation of the forced share with regard to collation. The thesis also describes the basic procedural rights of the forced heir.

In later chapters, the thesis focuses on the institution of disinheritance with attention to legal causes and specific cases, such as disinheritance of a prodigal or indebted forced heir, or disinheritance by mistake. This section concludes by discussing the descendants of a disinherited person, and whether the disinheritance of their ascendant does or does not apply to them as well.

The thesis also describes particular legal actions related to disinheritance and forced heir protection, especially those concerning collation, authenticity, validity or proving the cause.

The last chapter introduces the reader to the current disinheritance and forced heir protection legislation in France.